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No. 86-839

IN THE
Supreme Court of the United States
OCTOBER TERM, 1986

RALPH C. BEHNING, *et al.*,
Petitioners,

v.

CAMELBACK SKI CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Maryland Court of Appeals properly applied the most recent decisions of this Court on the subject of "long-arm" jurisdiction when it determined that 1) general jurisdiction did not exist over a non-resident ski area where contacts with the forum were minimal and isolated, and 2) Petitioners' cause of action did not arise out of or relate to those contacts?

STATEMENT OF CORPORATE AFFILIATIONS

Pursuant to Supreme Court Rule 28.1, Respondent Camelback Ski Corporation states that it has no parent, subsidiary or affiliated corporations.

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STATEMENT OF THE CASE

We are constrained to recite the facts relevant to jurisdiction as Petitioners' presentation contains numerous errors and omits substantial pertinent material.

As the Maryland Court of Appeals correctly held, Camelback Ski Corporation ("Camelback") operates a ski resort at Tannersville, Pennsylvania. As a ski resort, Camelback is a fixed-site recreational facility. Camelback is incorporated in Pennsylvania, and all offices and facilities are located in Pennsylvania. It has no charter or license to do business in Maryland or in any state other than Pennsylvania. Camelback has no agent for service of process in Maryland, owns no real estate in Maryland,

sells no products in Maryland, and offers no services to be performed in Maryland. Similarly, Camelback has no agents or representatives living in Maryland, pays no Maryland taxes, derives no revenue from goods consumed or services performed in Maryland, and does not manufacture, sell, or distribute any goods or products. All revenues are derived from operation of its ski facility in Pennsylvania. App. A-9.[1]

Camelback is a "day" as opposed to "destination" resort, in the language of the ski industry. That is, Camelback's clientele is comprised primarily, but not exclusively, of skiers who live in the general vicinity of the resort and travel to the area from their homes or businesses for a day or a night of skiing and then return home that same day. In contrast, a destination resort is one whose clientele stays at or near the resort for an extended period of time, typically traveling a substantial distance to the resort. Camelback is located in Northeastern Pennsylvania near that State's borders with New York and New Jersey. Camelback solicits customers from states proximate to its facility. Because of its distance from Maryland, and particularly population centers in Maryland, Camelback by conscious management decision does not devote marketing resources to attract Maryland skiers. App. A-9, A-10.

Petitioners are Maryland residents who traveled to Camelback to ski for the day. The resort was selected not by Petitioners but by friends who drove them to Camelback. As the Court of Appeals found, Petitioners ". . . trip to Camelback had not been triggered by [Camelback's] solicitation in Maryland." App. A-14.

Camelback does not maintain that it has no contacts with Maryland, but rather, that such contacts were so limited that they cannot sustain either general or specific

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[1] All references to "App. ——" relate to the Appendix to Petition for Writ of Certiorari.

jurisdiction. The trial court found, as a matter of fact, that Camelback had only four "contacts" with Maryland:[2] 1) non-paid advertising—disseminating information—in Ski Resorts Magazine distributed in Maryland; 2) sending brochures to ski shops in Maryland upon specific request; 3) maintaining WATS telephone service for Maryland; and 4) sending one employee on a one-time, one-day promotional trip to Maryland two years after Petitioners' injury, which trip produced absolutely no business.[3] In analyzing these four "contacts," the Maryland Court of Appeals determined that individually and collectively, they failed to satisfy both the "continuous and systematic general business contact standard" of *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408 (1984) (*"Helicol"*), and the "persistent course of conduct" standard of the Maryland statute.

Furthermore, while recognizing Petitioners' concession that this case involves general jurisdiction only (App. A-14), the Court of Appeals nonetheless held that Petitioners failed to satisfy a critical element of the specific jurisdiction test; namely, their cause of action does not "arise out of or relate to" the aforesaid four "contacts."

SUMMARY OF ARGUMENT

No basis exists for this Court to assume jurisdiction over this matter. It presents no novel or unique issues. Rather, the Court of Appeals of Maryland, after careful analysis, applied correctly the pertinent decisions of this Court. Moreover, there is an adequate and independent state law ground for sustaining the decision below: *i.e.*,

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[2] Petitioners have attempted at all levels, without success, to impute additional contacts to Camelback; that effort continues before this Court.

[3] Camelback has objected to certain of these factual findings. The Court of Appeals, while not expressly overruling the trial courts factual finding, clearly found no jurisdictional significance whatsoever to the WATS line or the sending of brochures into Maryland. App. A-12 - A-14.

the Court of Appeals found expressly that Camelback's contacts with Maryland were inadequate to satisfy the requirements of the Maryland long-arm statute.

Because Camelback's contacts with Maryland fall far short of "continuous and systematic general business contacts," there can be no general jurisdiction under the Due Process Clause of the Fourteenth Amendment. *Helicol, supra.* Here, Camelback had only four isolated contacts with Maryland. The defendant in *Helicol*, by contrast, had substantially greater contacts, qualitatively and quantitatively; yet, those contacts were inadequate to sustain general jurisdiction. Additionally, there can be no specific jurisdiction under the Due Process Clause because Petitioners' cause of action did not arise out of or relate to Camelback's "minimal" contacts with Maryland as required by *Burger King Corporation v. Rudzewicz*, 471 U.S. ——, 105 S.Ct. 2174 (1985) (*"Burger King"*) and *Helicol, supra.*

ARGUMENT

THE COURT OF APPEALS OF MARYLAND APPLIED THE MOST RECENT DECISIONS OF THIS COURT ON THE SUBJECT OF "LONG-ARM" JURISDICTION

Maryland's Court of Appeals acknowledged and carefully applied the most recent and controlling decisions of this Court relative to the issues presented. Accordingly, there is no basis for granting the Petition for Writ of Certiorari.

In the past several years, after a hiatus of nearly twenty years, the Supreme Court has decided a number of cases that address a State's ability to exercise personal jurisdiction over foreign defendants. One effect of those decisions has been to refocus attention to doctrinal distinctions and analytical requirements originally articulated in *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945).

In declining to exercise personal jurisdiction on behalf of one of its citizens, the Court of Appeals noted and adopted the distinction between "general" and "specific" jurisdiction heretofore absent from Maryland decisions, and then proceeded to analyze the facts of this case applying the standard established by this Court.

First, the Court of Appeals noted that the underlying due process standard

> . . . is not susceptible to mechanical application and the facts of each case must be weighed to determine whether the requisite "affiliating circumstances" are present . . .

App. A-4. The Court recognized that the "central concern" must be in "the relationship among the defendant, the forum, and the litigation." App. A-7 (citation omitted). In evaluating the forum contacts of Camelback in the context of general jurisdiction, the Court of Appeals acknowledged that:

> It is the quality, consistency, and cause of these contacts that we must examine to determine whether they are sufficient, and of such a continuous and systematic nature as will support the assertion of personal jurisdiction over Camelback.

App. A-10.

In short, the Court of Appeals knew the law, knew the proper standards for application of the law, and undertook to apply those standards. And on the facts and the law, the Court of Appeals reached the proper decision. There simply is nothing unique about the decision below that warrants issuance of a Writ of Certiorari.

THE STATE LONG-ARM STATUTE WAS APPLIED

It is axiomatic that the valid exercise of long-arm jurisdiction requires satisfying both due process and state statutory standards. Camelback submits that the Court

of Appeals decision is predicated on a finding that neither test is satisfied.

The Court of Appeals applied the due process standards relating to general and specific jurisdiction, and the pertinent statutory standard to the facts of this case. It expressly determined that Camelback did not regularly do or solicit business or engage in any other persistent course of conduct in Maryland. App. A-11, A-14. Thus, there is clearly an adequate and independent state law basis for the decision of the Court of Appeals and therefore no reason to grant the Petition for Writ of Certiorari in this case.

PETITIONERS' FORMULATION OF SPECIFIC JURISDICTION IS CONTRARY TO THE DECISIONS OF THIS COURT

Petitioners now appear to argue for application of specific jurisdiction only. Therefore, it is necessary to address briefly their concept of specific jurisdiction.[4] In essence, Petitioners argue that if a defendant has "fair warning" or "foreseeability" of causing injury in a forum, the defendant may be subject to jurisdiction for claims related to that injury.[5] This very issue was considered and rejected in *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 294 (1980): "This kind of 'foreseeability' alone has never been a sufficient benchmark for personal jurisdiction under the Due Process Clause." *Burger King, supra* at ——, 105 S.Ct. at 2183.

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[4] It is not at all clear that the issue of specific jurisdiction is properly preserved for review by this Court. App. A-14. Nonetheless, Camelback will address this issue as it appears Petitioners' argument at this level is for application of specific jurisdiction.

[5] In actuality, Petitioners' argument is weaker than described. They do not argue that foreseeability of causing injury in a forum gives rise to jurisdiction, but rather that jurisdiction may be predicated on the foreseeability of eventually causing "effects or consequences" in a forum, based on an injury sustained outside the forum. Pet. p. 7.

Furthermore, Petitioners would eviscerate the "arising out of or relating to" component of specific jurisdiction. Petitioners propose the following rule of law:

> Where multistate commercial activity is involved, it is the *marketing relationship* that establishes the defendant's "minimum contacts" with the forum state as to a cause of action "arising out of or relating to" the *business enterprise regularly pursued or promoted there.* (Emphasis added.)

Pet. p. 9. Translated, Petitioners assert that for purposes of specific jurisdiction, minimal commercial solicitation (*eg.*, of skiers) in a foreign forum is sufficient to establish specific jurisdiction for any cause of action "related to" the subject of the solicitation (*e.g.*, skiing). Thus, Petitioners postulate, if Camelback solicited skiers in Maryland, it is subject to specific jurisdiction in Maryland for any cause of action whatsoever "arising out of or relating to" skiing.

This new formulation is also directly at odds with this Court's holdings. *Burger King* made clear that for specific jurisdiction to lie a plaintiff's cause of action must "arise proximately" from a defendant's forum contact. 105 S.Ct. at 2183. *Accord*, von Mehren and Trautman, *Jurisdiction to Adjudicate, A Suggested Analysis*, 79 Harv. L. Rev. 1121, 1144-45 (1966).

The findings below, unchallenged here, that the Behnings did not travel to Camelback in response to any solicitation by that resort, and that Behnings' cause of action did not "arise out of or relate to" any of Camelbacks' solicitation in Maryland precludes any finding of specific jurisdiction based on the standards previously established by this Court.

CONCLUSION

The Court of Appeals properly applied the pertinent decisions of this Court. Petitioners seek to modify those decisions without support or justification. Accordingly, Respondent urges this Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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